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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,084	11/20/2006	Dietrich Haaf	3547 0011US	8064
29894 7590 01/21/2010 DREISS, FUHLENDORF, STEIMLE & BECKER POSTFACH 10 37 62 D-70032 STUTTGART, GERMANY			EXAMINER CALABRESE, MICHAEL A	
			ART UNIT 3637	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,084

Applicant(s)

HAAF, DIETRICH

Examiner

MICHAEL CALABRESE

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 17-22 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 17-22 and 24-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The Amendment filed on November 19, 2009 has been entered. Claims 16, 23, and 28 have been canceled. Claims 15, 17-22, and 24-27 remain pending in the application.

Claim Objections

2. Claim 24 is objected to because of the following informalities: It appears the word "that" in line 2 of the claim should read "than". Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15, 17-20, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper (US Patent No. 3,709,162) in view of Quigley (US Patent No. 2,544,743) and Milles (United States Publication No. 2002/0148393).

5. As for Claim 15, Roper is cited for teaching a nestable load support (10; Figures 1-2) capable of disposition by a stacker having prongs, the support comprising: a deck having a central portion (11), a peripheral outer edge (16) and several legs (12) disposed between said central portion (11) and said outer edge (See Figures 1 and 2), wherein each leg (12) is formed by a depression in said deck, each leg (12) having two side walls (18, 19) and a bottom (17), wherein said side walls (18, 19) and said bottom (17) define a trapezoidal cross-section (See Figure 2) (See Col. 2, Line 63 to Col. 3,

Line 26), said outer edge (16) and said central portion (11) being exclusively connected to each other via said side walls (18, 19) and said bottoms (17) of said legs (12) (See Figures 1-2), and each bottom extending along an entire length of the leg (12), thereby forming a continuous lower runner (See Figure 1).

6. Roper does not explicitly state said side walls of legs having at least one opening capable of receiving each prong of a stacker and the deck made from plastic material or from recycled plastic material.

7. Quigley is cited for teaching side walls of legs (A; See marked up Figure 2 below) having at least one opening (B; See marked up Figure 2 below) capable of receiving each prong of a stacker or fork-lift.

8. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper so as to include openings in the sidewalls of the legs capable of receiving each prong of a stacker or fork-lift as taught by Quigley in order to allow for the load support to be carried by a machine when it supports a large load.

9. Milles is cited for teaching a nestable pallet being molded from a recycled plastic (Paragraph [0026]).

10. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load support of Roper, as modified by Quigley, so as to mold the pallet from a recycled plastic as taught by Milles as molding a load support from a recycled plastic is a relatively inexpensive process by which to form an environmentally friendly load support.

11. The limitations, "a stacker having prongs" and "for each prong of the stacker" (lines 8-9) are interpreted in this instance as intended use language. The corresponding structure need not perform the intended functions, but rather, be capable of performing the intended use. In this case, with the teaching of Quigley, Roper's load support is obviously capable of receiving a prong of a fork lift or stacker.

12. It should be noted that the limitation, "wherein a thickness and inclination of said side walls as well as a level of said at least one opening are disposed, structured, and dimensioned to permit production of the load support using a molding tool which consists only of an upper part and a lower part, without a slider" is considered a product-by-process limitation. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." Please see MPEP 2113 [R-1]. The method or process by which the load support is made is immaterial to the article claim. While the limitation is given no patentable weight, it should be noted that the load support of Roper, as modified by Quigley and Milles, is capable of being made by various well known production methods, including plastic molding and molding utilizing a molding tool which consist only of an upper part and a lower part, without a slider.

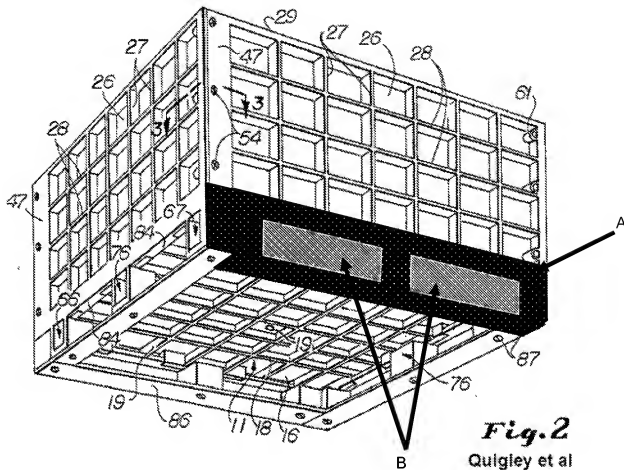


Fig. 2
Quigley et al
(3,985,258)

13. As for Claim 17, Roper is further cited for teaching at least one said leg (12) is parallel to each outer edge (16) of said deck (See Figure 1).
14. As for Claim 18, Roper is further cited for teaching several legs (12) or runners (12) form a square or rectangle (See Figure 1).
15. As for Claim 19, Roper is further cited for teaching section edges (area of the top surface of the deck adjacent inner sidewall 19) between said side walls (18, 19) and said central portion (11) extending parallel to said outer edge (16) of said deck (See Figures 1-2).

16. As for Claim 20, Roper is further cited for teaching the load support having a rectangular or square base surface (bottom of 11; See Figures 1 and 2).

17. As for Claim 24, Quigley is cited for teaching said openings (B; See marked up Figure 2 above) are capable of being wider than a prong of a fork-lift or of a lifting truck (stacker) and said openings (B; See marked up Figure 2 above) are capable of being higher than a prong of a fork-lift or of a lifting truck (stacker). Quigley teaches in Col. 4, Lines 15-20, that the forks of a fork-lift are inserted into the openings (B; See marked up Figure 2 above), thus obviously necessitating the width and height of the openings to be larger than any respective width and height of fork-lift forks. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper, as modified by Quigley and Milles, so as to include the openings adapted to be wider than the prong of a fork-lift or of a lifting truck and adapted to be higher than the prong of the fork-lift or of the lifting truck as taught by Quigley in order to allow for entrance of the forks into the openings in order to lift the load support. It follows that for the purpose of this examination and the position taken, the limitations, adapted to be higher and wider than the prong of the stacker are interpreted in this instance as intended use language. The corresponding structure need not perform the intended functions, but rather, be capable of performing the intended use. In this case, with the teaching of Quigley, Roper's load support obviously has openings capable of being wider and higher than a prong of a fork lift or stacker.

18. As for Claim 25, Roper, as modified by Quigley and Milles, does not explicitly state two parallel openings are provided in each side wall. Quigley is cited for teaching

two parallel openings (B; See marked up Figure 2 above) being provided in each side. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of, as modified by Quigley and Milles, so as to provide two parallel openings in each side wall as taught by Quigley in order to allow for conventional fork-lift machines, which are known in the art to have two adjacent forks, to lift the load support.

19. As for Claim 26, Roper, as modified by Quigley and Milles, does not explicitly state a separation between center axes of said openings is between 340 mm and 400 mm or about 370 mm. Quigley is cited for teaching a load support device having spaced-apart openings wherein there is a separation between the center axes of the openings (B; See marked up Figure 2 above). Quigley, however, is silent as to the dimensions of the spacing. It would have been an obvious matter of design choice to form the openings with a separation between center axes of said openings being between 340 mm and 400 mm or about 370 mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237, (CCPA 1955). Therefore, it would have been obvious at the time of the invention to modify the spacing of the openings of the load support device of Roper, as modified by Quigley and Milles, to the range of 240-400 mm, or about 370 mm, to conform to the desired spacing of the fork-lift forks to be used to lift the load support as this is an obvious design choice well within the skill of an ordinary craftsman.

20. As for Claim 27, Roper, as modified by Quigley and Milles, does not explicitly state a height of said openings is more than 85 mm and a width of said openings is greater than 260 mm. Quigley is cited for teaching openings (B; See marked up Figure 2 above) in the legs (A; See marked up Figure 2 above) of the load support. Quigley, however, is silent as to the height and width dimensions of the openings. It would have been an obvious matter of design choice to form the height of said openings being more than 85 mm and the width of said openings being greater than 260 mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237, (CCPA 1955). Therefore, it would have been obvious at the time of the invention to modify dimensions of the openings of the load support device of the Roper and Quigley combination to a height greater than 85 mm and a width greater than 260 mm, to conform to the dimensions of the fork-lift forks to be used to lift the load support as this is an obvious design choice well within the skill of an ordinary craftsman.

21. Alternatively, Claims 15, 17-20, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper (US Patent No. 3,709,162) in view of Elder et al. (Elder) (United States Patent No. 7,607,628) and Milles (United States Publication No. 2002/0148393).

22. As for Claim 15, Roper is cited for teaching a nestable load support (10; Figures 1-2) capable of disposition by a stacker having prongs, the support comprising: a deck having a central portion (11), a peripheral outer edge (16) and several legs (12)

disposed between said central portion (11) and said outer edge (See Figures 1 and 2), wherein each leg (12) is formed by a depression in said deck, each leg (12) having two side walls (18, 19) and a bottom (17), wherein said side walls (18, 19) and said bottom (17) define a trapezoidal cross-section (See Figure 2) (See Col. 2, Line 63 to Col. 3, Line 26), said outer edge (16) and said central portion (11) being exclusively connected to each other via said side walls (18, 19) and said bottoms (17) of said legs (12) (See Figures 1-2), and each bottom extending along an entire length of the leg (12), thereby forming a continuous lower runner (See Figure 1).

23. Roper does not explicitly state said side walls of legs having at least one opening capable of receiving each prong of a stacker and the deck made from plastic material or from recycled plastic material.

24. Elder is cited for teaching a nestable pallet having side walls of legs (runners 120; See Figure 1) having at least one opening (124) capable of receiving each prong of a stacker or fork-lift (See Col. 4, Lines 12-18).

25. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper so as to include openings in the sidewalls of the legs capable of receiving each prong of a stacker or fork-lift as taught by Elder in order to allow for the load support to be carried by a machine when it supports a large load.

26. While the position is taken that the pallet of Elder is formed from plastic (Elder discusses the pallet being molded, which alone, or in combination with the drawings of Elder, would suggested to one of ordinary skill in the art that the pallet is formed of

plastic) and that it would have obvious to construct the load support of Roper of plastic as taught by Elder, if the position is taken that Elder does not explicitly state the pallet is made of plastic, Milles is cited for teaching a nestable pallet being molded from a recycled plastic (Paragraph [0026]).

27. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load support of Roper, as modified by Elder, so as to mold the pallet from a recycled plastic as taught by Milles as molding a load support from a recycled plastic is a relatively inexpensive process by which to form an environmentally friendly load support.

28. The limitations, "a stacker having prongs" and "for each prong of the stacker" (lines 8-9) are interpreted in this instance as intended use language. The corresponding structure need not perform the intended functions, but rather, be capable of performing the intended use. In this case, with the teaching of Elder, Roper's load support is obviously capable of receiving a prong of a fork lift or stacker.

29. It should be noted that the limitation, "wherein a thickness and inclination of said side walls as well as a level of said at least one opening are disposed, structured, and dimensioned to permit production of the load support using a molding tool which consists only of an upper part and a lower part, without a slider" is considered a product-by-process limitation. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the

prior art, the claim is unpatentable even though the prior product was made by a different process." Please see MPEP 2113 [R-1]. The method or process by which the load support is made is immaterial to the article claim. While the limitation is given no patentable weight, it should be noted that the load support of Roper, as modified by Elder and Milles, is capable of being made by various well known production methods, including plastic molding and molding utilizing a molding tool which consist only of an upper part and a lower part, without a slider.

30. As for Claim 17, Roper is further cited for teaching at least one said leg (12) is parallel to each outer edge (16) of said deck (See Figure 1).

31. As for Claim 18, Roper is further cited for teaching several legs (12) or runners (12) form a square or rectangle (See Figure 1).

32. As for Claim 19, Roper is further cited for teaching section edges (area of the top surface of the deck adjacent inner sidewall 19) between said side walls (18, 19) and said central portion (11) extending parallel to said outer edge (16) of said deck (See Figures 1-2).

33. As for Claim 20, Roper is further cited for teaching the load support having a rectangular or square base surface (bottom of 11; See Figures 1 and 2).

34. As for Claim 24, Elder is cited for teaching said openings (124) are capable of being wider than a prong of a fork-lift or of a lifting truck (stacker) and said openings (124) are capable of being higher than a prong of a fork-lift or of a lifting truck (stacker). Elder teaches in Col. 4, Lines 12-18, that the forks of a fork-lift are inserted into the openings, thus obviously necessitating the width and height of the openings to be larger

than any respective width and height of fork-lift forks. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper, as modified by Elder and Milles, so as to include the openings adapted to be wider than the prong of a fork-lift or of a lifting truck and adapted to be higher than the prong of the fork-lift or of the lifting truck as taught by Elder in order to allow for entrance of the forks into the openings in order to lift the load support. It follows that for the purpose of this examination and the position taken, the limitations, adapted to be higher and wider than the prong of the stacker are interpreted in this instance as intended use language. The corresponding structure need not perform the intended functions, but rather, be capable of performing the intended use. In this case, with the teaching of Elder, Roper's load support obviously has openings capable of being wider and higher than a prong of a fork lift or stacker.

35. As for Claim 25, Roper, as modified by Elder and Milles, does not explicitly state two parallel openings are provided in each side wall. Elder is cited for teaching two parallel openings (124's See Figure 1) being provided in each side wall (runner 120). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper, as modified by Elder and Milles, so as to provide two parallel openings in each side wall as taught by Elder in order to allow for conventional fork-lift machines, which are known in the art to have two adjacent forks, to lift the load support.

36. As for Claim 26, Roper, as modified by Elder and Milles, does not explicitly state a separation between center axes of said openings is between 340 mm and 400 mm or

about 370 mm. Elder is cited for teaching a load support device having spaced-apart openings wherein there is a separation between the center axes of the openings (124). It would have been an obvious matter of design choice to form the openings with a separation between center axes of said openings being between 340 mm and 400 mm or about 370 mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237, (CCPA 1955). Therefore, it would have been obvious at the time of the invention to modify the spacing of the openings of the load support device Roper, as modified by Elder and Milles to the range of 240-400 mm, or about 370 mm, to conform to the desired spacing of the fork-lift forks to be used to lift the load support as this is an obvious design choice well within the skill of an ordinary craftsman.

37. As for Claim 27, Roper, as modified by Elder and Milles, does not explicitly state a height of said openings is more than 85 mm and a width of said openings is greater than 260 mm. Elder is cited for teaching openings (124) in the legs of the load support. It would have been an obvious matter of design choice to form the height of said openings being more than 85 mm and the width of said openings being greater than 260 mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237, (CCPA 1955). Therefore, it would have been obvious at the time of the invention to modify dimensions of the openings of the load support device Roper, as modified by Elder and Milles, to a height greater than

85 mm and a width greater than 260 mm, to conform to the dimensions of the fork-lift forks to be used to lift the load support as this is an obvious design choice well within the skill of an ordinary craftsman.

38. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper in view of Quigley and Milles as applied to claim 15 above, and further in view of Wharton (US Patent No. 3,702,100).

39. As for Claims 21 and 22, Roper, as modified by Quigley and Milles, does not explicitly state said deck or said runners are reinforced by several ribs. Wharton is cited for teaching a deck (pallet of Figure 1) with legs (33, 37) reinforced by several ribs (m) (See Col. 5, Lines 44-48 and Figure 16). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper, as modified by Quigley and Milles, so as to include several reinforcing ribs reinforcing the deck and runners as taught by Wharton in order to reinforce the channels and deck under lifting a large load.

Response to Arguments

40. Applicant's arguments filed November 19, 2009 have been fully considered but they are not persuasive.

41. As for Applicant's arguments pertaining to the construction of the pallet and construction using an injection molding tool, it should be noted that as previously stated above, the limitation added to the claims is a product-by-process limitation and is given

no patentable weight. Only subject matter pertaining to the final product in article claims is given patentable weight.

42. As for Applicants argument with respect to the process of forming the load support of Roper, if the pallet of Roper were to be obviously formed from plastic, the structure would be capable of being molded accordingly.

43. As for Applicant's argument with respect to the Quigley reference and combination thereof, Quigley suggests to one of ordinary skill in the art to form holes in the bottom of each leg of the load support on each side so the load support can be manipulated by a fork lift. The bottoms of each leg of Quigley are seen to have continuous lower bottoms (each leg independently has a continuous lower bottom). It should also be noted that the production steps of the Quigley reference do not preclude the reference from teaching the claimed limitations. Nonetheless, forming holes in the load support of Roper would result in the legs having continuous lower bottoms. Furthermore, motivation to combine these references can be found in the Quigley reference or found in general knowledge in the art.

Conclusion

44. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peil et al. disclose a nestable pallet formed from recycled materials.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL CALABRESE whose telephone number is

(571)270-7862. The examiner can normally be reached on Monday - Thursday 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Allen Shriver can be reached on (571) 272-6698. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. C./
Examiner, Art Unit 3637

/J. ALLEN SHRIVER II/
Supervisory Patent Examiner, Art Unit 3632